

ESTTA Tracking number: **ESTTA199398**

Filing date: **03/19/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	SMS CLOTHING
Granted to Date of previous extension	03/19/2008
Address	1390 Alpha Lake Rd. Whistler, BC V0N1B1 CANADA

Attorney information	Glenn Gundersen Dechert LLP Cira Centre 2929 Arch Street Philadelphia, PA 19104-2808 UNITED STATES glenn.gundersen@dechert.com, hal.borden@dechert.com, jacob.bishop@dechert.com Phone:215-994-2183
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Applicant Information

Application No	77194426	Publication date	11/20/2007
Opposition Filing Date	03/19/2008	Opposition Period Ends	03/19/2008
Applicant	Daniel, Sayo Isaac 848 Brickell Key Drive, #3402 Miami, FL 33131 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: shoes, footwear, T-shirts, sports shirts, sports jerseys, sports jackets, sports pants, track pants, and sports fleece pullovers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SMS		
Goods/Services	clothing		

Attachments	SMSWEAR notice of opposition.pdf (3 pages)(75925 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Glenn Gundersen/
Name	Glenn Gundersen
Date	03/19/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: SMSWEAR

Serial No.: 77/194,426

Published in the *Official Gazette* of
November 20, 2007

SMS CLOTHING

Opposer,

v.

SAYO ISAAC DANIEL

Applicant.

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Opposition No.

NOTICE OF OPPOSITION

Opposer SMS Clothing (“Opposer”), a sole proprietorship with an office at 201-1390 Alpha Lake Rd, Whistler, BC, Canada, believes it will be damaged by the registration of the mark shown in Application Serial No. 77/194,426, and therefore opposes registration. The grounds for this opposition are as follows:

1. Opposer has sold clothing in the United States under the mark SMS for more than six years.
2. On May 31, 2007, Applicant filed an application under Section 1(b) of the Trademark Act to register SMSWEAR on the Principal Register as a trademark for “shoes, footwear, T-shirts, sports shirts, sports jerseys, sports jackets, sports pants, track pants, and sports

fleece pullovers” (the “Application”). The Application was designated Serial No. 77/194,426 and was published for opposition in the *Official Gazette* on November 20, 2007.

3. Opposer’s use of the mark SMS on clothing predates the filing date of the Application.

4. On information and belief, Applicant has not made use in commerce of the SMSWEAR mark on the goods identified in the Application.

5. Applicant’s SMSWEAR mark combines Opposer’s SMS mark with the generic term WEAR, and is confusingly similar to Opposer’s SMS mark.

6. The goods for which Applicant is seeking registration of its SMSWEAR mark are identical or closely related to Opposer’s goods.

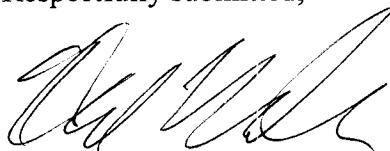
7. On information and belief, the goods identified in the Application could be sold through the same or similar channels of trade as Opposer’s goods.

8. On information and belief, the goods identified in the Application could be sold to the same or a similar class of consumers as Opposer’s goods.

9. In light of the foregoing, Applicant’s registration and use of SMSWEAR in connection with the products specified in the Application is likely to cause confusion or mistake or to deceive, or to create the false impression that Applicant’s goods are provided by, related to, endorsed by, or associated with Opposer, or otherwise cause injury to Opposer’s rights in its marks and its reputation and identity.

WHEREFORE, Opposer prays that Application Serial No. 77/194,426 be refused registration and that this opposition be sustained.

Respectfully submitted,



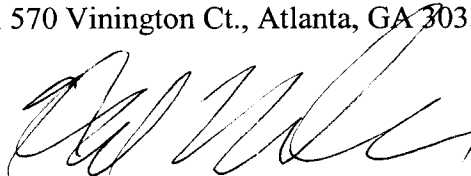
Glenn A. Gundersen
Hal E. Borden
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-2183

Attorneys for Opposer,
SMS CLOTHING

Dated: March 19, 2008

Certificate of Service

I hereby certify that, on March 19, 2008, a true and correct copy of the foregoing Notice of Opposition has been duly served by sending such copy by first class mail, postage prepaid, to Sanford J. Asman, Law Office of Sanford J. Asman, 570 Vinington Ct., Atlanta, GA 30350-5710.



Hal E. Borden